

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	
Definition of Markets for)	
Purposes of the)	CS Docket No. 95-178
Cable Television Mandatory)	
Television Broadcast)	
Signal Carriage Rules)	

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REPLY COMMENTS OF KPNX BROADCASTING COMPANY

KPNX Broadcasting Company ("KPNX"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, hereby replies to the comments filed in the above-captioned rulemaking proceeding.¹ Specifically, KPNX disagrees with those commenters that urge the Commission to continue to use Arbitron's "areas of dominant influence" ("ADI") to define market areas for purposes of the Commission's must-carry rules.² KPNX believes that the Commission should amend its rules to define market areas geographically using the Nielsen "Designated Market Area" ("DMA").

Those commenters voicing support for retention of the ADI market boundaries are motivated by the desire to avoid short

¹ Notice of Proposed Rulemaking In the Matter of Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules, FCC 95-489 (released December 8, 1995) ("Notice" or "NPRM").

² See 47 C.F.R. § 73.3555(e)(3)(i).

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term inconvenience, or, in the case of cable operators, the desire to avoid the assertion of must-carry rights by television operators with a clear presence in their market but without any such rights under existing ADI boundaries. Simply put, Arbitron ceased its designation and publication of ADI market areas since adoption of the current market definition, an event unforeseen by both Congress and the Commission. As a result, the mechanism upon which the Commission proposes to rely in measuring viewing patterns and establishing must-carry rights and obligations dates back to 1991-1992. The continued use of an antiquated definition of "market area" cannot be reconciled with the objectives set forth in the legislative history surrounding Section 614(h) of the Communications Act.

Congress provided for the mandatory carriage of broadcast television signals by cable operators in order to preserve local television service. Underlying the 1992 Cable Act and, consequently, the Commission's must-carry rules, is Congress' desire to ensure public access to broadcast television stations that have an obligation to serve their local communities. The Commission's regulatory scheme governing television broadcasting emphasizes responsiveness to the local community -- that system cannot function properly unless television stations have access to the viewers they serve. Whether a television station provides "local" service to a particular community is best evidenced by local viewing patterns. Reliance on geographic measurements that present an outdated picture of viewing patterns, like Arbitron's 1991-1992 ADIs, does

nothing to further Congress' intent to preserve local television service and does not accurately reflect the area in which a station should be entitled to coverage. The underlying purpose of the mandatory carriage obligations cannot be effected where whether or not a broadcaster is entitled to assert must-carry status hinges on a definition of market area that does not adequately reflect which viewers rely on any given station for local service.

For example, a large portion of Northern Arizona, where KPNX has a strong local presence, is included in the station's DMA. Advertisers wishing to buy time on KPNX rely on Nielsen ratings which include viewers in Northern Arizona. Yet, because of the outmoded definition of a "market area" used for purposes of the must-carry rules, KPNX cannot assert mandatory carriage rights in Northern Arizona, which is included in the KPNX DMA but designated as a separate ADI. Thus, viewers in Northern Arizona may be deprived of KPNX's local service, a result which contravenes the objectives of the must-carry rules.

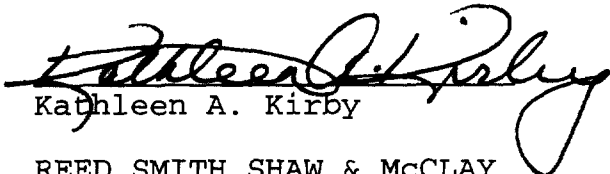
The same logic Congress used in affording the Commission the flexibility to add or subtract communities from a station's television market to better reflect marketplace conditions dictates abandonment of the anachronism that defines a television station's market area using the Arbitron ADI. KPNX urges the Commission, therefore, to amend its rules to establish a new mechanism for defining market areas in which television broadcasters may insist on carriage by cable operators. Currently, the best measurement is the Nielsen DMA. Adoption of

the DMA market definition would better effectuate the purposes of Section 614(h), more accurately take into account changing marketplace conditions and create no undue instability for the affected parties. In addition, the Commission should ensure that these designations are updated at three year intervals prior to each election period.

Respectfully submitted,

KPNX BROADCASTING COMPANY

By:


Kathleen A. Kirby

REED SMITH SHAW & McCLAY
1301 K Street, N.W.
Suite 1100 -- East Tower
Washington, D.C. 20005-3317
(202) 414-9200

Its Attorneys

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